

1
2
3
4
5
6
7
8
9
10
11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF OREGON
14

15 JERRI L. BOON,
16 Plaintiff,

O R D E R
Civ. No. 09-1353-AA

17 vs.

18 UNION PACIFIC RAILROAD COMPANY,
a foreign corporation,

19 Defendant.
20

21 AIKEN, Chief Judge:

22 Defendant filed a motion to dismiss on April 27, 2010
23 alleging lack of subject matter jurisdiction. Plaintiff's
24 response was due by May 11, 2010. To date, nearly two months
25 later, plaintiff, who is represented by counsel, has failed to
26 file any opposition or response to defendant's motion. The court
27 will therefore consider defendant's motion unopposed.

28 Pursuant to Fed. R. Civ. P. 12(b)(1), defendant's motion is

1 granted. Plaintiff's Amended Complaint contains general factual
2 allegations regarding age, gender, and mental disability
3 discrimination, but fails to set forth any causes of action or
4 any legal basis for any claims. The Amended Complaint also fails
5 to state whether plaintiff is asserting claims under state and/or
6 federal law. Plaintiff has the burden at all times of
7 establishing subject matter jurisdiction. Thornhill Publishing
8 Co. v. General Tel. & Elec. Corp., 594 F.2d 730, 733 (9th Cir.
9 1979). For a federal court to have subject matter jurisdiction,
10 plaintiff must either assert a federal question or seek diversity
11 jurisdiction. See 28 U.S.C. §§ 1331, 1332. When, as here,
12 neither federal question nor diversity jurisdiction exist based
13 on the face of the complaint (or Amended Complaint), the court is
14 without subject matter jurisdiction to hear the matter and the
15 case must be dismissed.

16 Defendant's motion to dismiss (doc. 11) is granted and all
17 pending motions are denied as moot.

18 IT IS SO ORDERED.

19 Dated this 6 day of July 2010.
20
21
22

23 /s/ Ann Aiken
24 Ann Aiken
United States District Judge
25
26
27
28